

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

KENNETH WAYNE FICK,)	No. CV-F-05-327 REC/SMS
)	
)	ORDER GRANTING COUNTY OF
)	FRESNO'S MOTION TO QUASH
Plaintiff,)	SERVICE OF SUMMONS AND
)	COMPLAINT AND DIRECTING
vs.)	PLAINTIFF TO FILE SECOND
)	AMENDED COMPLAINT WITHIN 30
)	DAYS
PEOPLE OF CALIFORNIA, et al.,)	
)	
)	
Defendant.)	
)	
)	

On August 1, 2005, the court heard the motion to quash service of summons and complaint filed by the County of Kern under a special appearance.

Upon due consideration of the record and the arguments of the parties, the court grants the County of Kern's motion and quashes service. The court also orders plaintiff to file a Second Amended Complaint in accordance with this Order within 30 days of the filing date of this Order.

The County of Fresno moves the court to quash the summons served on it by plaintiff or to dismiss the action for

1 insufficient service of process. In so moving, the County avers
2 that the summons received by the County was unaccompanied by the
3 Amended Complaint.¹ The record substantiates the County's
4 position.

5 Rule 4(c)(1), Federal Rules of Civil Procedure, provides:

6 A summons shall be served together with a
7 copy of the complaint. The plaintiff is
8 responsible for service of a summons and
9 complaint within the time allowed under
subdivision (m) and shall furnish the person
effecting service with the necessary copies
of the summons and complaint.

10 Upon making a determination that process has not been properly
11 served on a defendant, district courts possess broad discretion
12 to either dismiss the plaintiff's complaint for failure to effect
13 service or to simply quash service of process. Dismissal of a
14 complaint, however, is inappropriate when there exists a
15 reasonable prospect that service may yet be obtained whereupon
16 the district court should, at most, quash service, allowing the
17 plaintiff to effect proper service. Unbenhauer v. Woog, 969 F.2d
18 25, 30 (3rd Cir. 1992); Amous v. Trustmark National Bank, 195
19 F.R.D. 607, 610 (N.D.Miss. 2000).

20 Here, because plaintiff will be ordered to file a Second
21 Amended Complaint and there exists a reasonable prospect that,
22 thereafter, plaintiff may effect proper service, the court
23

24 ¹It does not appear that plaintiff filed a written opposition
25 to this motion to quash. On July 25, 2005, plaintiff did file a
26 document which appears to respond to the motion to dismiss filed by
the City of Fresno on July 21, 2005, which motion to dismiss is set
for hearing on October 3, 2005.

1 quashes service on the County.

2 Plaintiff, proceeding in pro per, filed an Amended Complaint
3 on May 16, 2005. The Amended Complaint names as defendants the
4 "People of California" and "The U.S. America" and/or "People's
5 [sic] of California and Goverment [sic] and State Offices of
6 California and Reno, Nevada." The Amended Complaint appears for
7 the most part to be a request for leave to proceed in this action
8 in forma pauperis.² The Amended Complaint does state:

9 The first Clauses of Articles I, II, III:
10 Table of Title and Chapters,

11 Personality Theory; Intellectual property
12 laws, Philosophy of: G.W.F. Hegel Holding
13 that Personal Expression from Self
14 Actualization of Moral Rights Intellectual
15 property Rights or View of the Individual
16 Inventor?
17 73-505

18 ...

19 As of Too Order a Summons in a Civil Case,
20 Notice of Lawsuit and Request Whith and
21 Whithout Waiver of Service of Summons, and
22 Service Whith and Whithout Waiver of Summons,
23 As Will Proof of Service, Too District #3,
24 and District #31, Citi, and County of Fresno,
25 California, and Reno, Nevada.

26 (A) Is Not as a Body or In the Precise
Configuration and Assembly of Its Components,
Generally Known or Readily Ascertainable:
Proc. 6445 Constitution Shows Protection of
Rights Legal and Legislation Regulation of
Government Expression, (#17) Bill of Rights,
Self Evidenc Instrumentality: Petition of
Right;, or Deceit Bad Faith Willful Injury,
Custial Responsibility Exercise: Dolus of

25 ²However, plaintiff has already paid the filing fee.
26 Therefore, to the extent that the Amended Complaint seeks leave to
proceed in forma pauperis, that request is moot.

Fault Habeas Corpus: Benefits, Grievance; 1932
Federal Law Forbids Federal Courts From
Ruling on Police: Resolve Disputes, 29 USEA §§
101-115 As Will Termed Labor A It -
Injunction: Inventive Process, Natural
Rights.

...

Proc. 6445: Title 3 The President: Agreement
on Trade Regulations Between The United
States of America and The Republic of
Albania,: Acknowledging Development of
Relations and Direct Contact Between
Nationals and Companies of Both Parties Will
Promote Openness and Mutual Understanding and
Cooperation and Promote Respect Recognized
Worker Rights.

George Bush!!!

...

Has Been Decided That The President Might Be
Give Power To Change The Tariff J.W. Hamton
Jr. & Co. v. United States [1928]

...

As of All Complaint of Filed of City Hall Have
Amount of 2500,000 x 3 7500,000.00 x 25 =
10,000,000.00 As of All Doctor Report I Can
Not See A Doctor Without being Harassed
P.S Over All = 6300,000,000.00 AS of 85
Business and Doctor people of Fresno, and the
County of Fresno, Mayor, City Board, County
Board, City Police As of This The Attorney
General Wrote Me An Sed To File As of Public
Harassment See File And it is self
explanable [sic]

None of this is intelligible and does not comply with either
Rules 8 or 12(b)(6), Federal Rules of Civil Procedure.

The Amended Complaint was filed pursuant to the March 18,
2005 Order issued by Magistrate Judge Snyder, wherein Judge
Snyder conducted a sua sponte review of the Complaint under Rules

1 8 and 12, Federal Rules of Civil Procedure. Judge Snyder set
2 forth the standards governing statement of a claim upon which
3 relief can be granted under Rules 8 and 12(b)(6) and ruled in
4 pertinent part:

5 The complaint before the Court consists of a
6 two-inch thick stack of rambling,
7 disconnected narratives interspersed with
8 extraneous copies of documents, such as
9 social security correspondence or records,
10 administrative complaints made to law
11 enforcement agencies, and copies of website
12 information on government officials. The
13 named defendants include law enforcement
14 agencies, state and local executives,
15 hospitals, and individuals.

11 The complaint does not contain a short and
12 plain statement of the facts upon which
13 jurisdiction in this Court might rest, of the
14 claims made, or of the relief sought.
15 Plaintiff's allegations are not sufficient to
16 put any defendant on notice as to which of
17 his or its actions violated Plaintiff's
18 rights, or to permit the Court to determine
19 whether Plaintiff could possibly win relief.
20 At this point, it would be a fruitless
21 exercise to attempt service because the
22 complaint is so unclear that the extent of
23 the lawsuit cannot be determined.

18 Judge Snyder directed plaintiff to file an Amended Complaint
19 setting forth a short and plain statement of the facts
20 establishing jurisdiction and Plaintiff's claim or claims, and
21 clearly and succinctly indicating both the conduct of each
22 defendant who plaintiff claims violated his rights, and the
23 relief sought. Plaintiff was also advised in this Order that the
24 Amended Complaint must be complete in itself without reference to
25 any prior pleading. In dismissing the Complaint with leave to
26 amend, Judge Snyder ordered plaintiff

1 to file an amended complaint that complies
2 with the requirements of the pertinent
3 substantive law, the Federal Rules of Civil
4 Procedure, and the Local Rules of Practice;
5 ... failure to file an amended complaint in
6 accordance with this order will be considered
7 to be a failure to comply with an order of
8 the Court pursuant to Local Rule 11-110 and
9 will result in dismissal of this action.

10 Plaintiff has not complied with the substance of Judge
11 Snyder's ruling in the Amended Complaint. The Amended Complaint
12 does not allege the basis of this court's subject matter
13 jurisdiction and makes no sense. The court hereby orders
14 plaintiff to file a Second Amended Complaint.

15 The Second Amended Complaint must contain a short and plain
16 statement of the grounds upon which the court's subject matter
17 jurisdiction depends, a short and plain statement of the claim(s)
18 showing that plaintiff is entitled to relief, and a demand for
19 judgment for the relief sought by the plaintiff. Each defendant
20 must be named in the caption and the body of the Second Amended
21 Second Complaint. Plaintiff must allege with some degree of
22 particularity the overt acts which each defendant engaged in that
23 support plaintiff's claim(s) against that defendant. Plaintiff
24 is informed that he cannot refer to the prior Complaint or
25 Amended Complaint. Local Rule 15-220, Local Rules of Practice,
26 requires that an amended complaint be complete in itself without
reference to any prior pleading.

ACCORDINGLY:

1. The County of Kern's motion to quash service is granted.
2. Plaintiff shall file a Second Amended Complaint that

1 complies with the requirements of the pertinent substantive law,
2 the Federal Rules of Civil Procedure, the Local Rules of Practice
3 and this Order within 30 days of the filing date of this Order.
4 Failure to timely comply will result in the dismissal of this
5 action.

6 IT IS SO ORDERED.

7 **Dated: August 3, 2005**
668554

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE